



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 15, 1996

Ms. Tamara A. Armstrong  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR96-0546

Dear Ms. Armstrong:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38727.

The Travis County District Attorney's Office (the "county") received an open records request for its files pertaining to the capital murder charges against Robert Elmer Kleasen, who was convicted for the murder and dismemberment of two Mormon missionaries in 1975. You state that you are releasing to the requestor all of the requested information except for that which is deemed confidential by state or federal law.<sup>1</sup>

This office agrees that most of the information contained in Exhibit A is confidential under common-law privacy and thus must be withheld from the public pursuant to section 552.101.<sup>2</sup> The documents that we have left unmarked may be withheld in their entirety. With regard to those portions of documents that you have highlighted as being protected under section 552.101, we have indicated with our own

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<sup>1</sup>Acknowledging that you did not timely seek an open records decision from this office within regard to this request, you have sought to protect only information you believe to be confidential by law. A demonstration that information is made confidential by law outside the Open Records Act overcomes the legal presumption of openness. *See* Open Records Decision No. 150 (1977).

<sup>2</sup>Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

markings as to whether those portions are public. We have also marked the portions of Exhibit D that are either protected by common-law privacy or that must be released. Finally, the entire contents of Exhibit E must also be withheld pursuant to common-law privacy.

You have submitted to this office as "Exhibit B" a jury panel list, questionnaires completed by prospective jurors, and what appears to be criminal history record information ("CHRI") on certain prospective jurors. You contend that the information in the questionnaires is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 35.29 of the Code of Criminal Procedure. Article 35.29 provides as follows:

Information collected by the court or by a prosecuting attorney during the jury selection process *about a person who serves as a juror*, including the juror's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court *in which the person is serving or did serve as a juror*. On a showing of good cause, the court shall permit disclosure of the information sought. [Emphasis added].

Article 35.29 makes confidential information pertaining to only those individuals who actually served as jurors in Kleasen's criminal trial. Consequently, the county may not withhold any additional information contained in Exhibit B pursuant to article 35.29.<sup>3</sup>

You contend that Exhibit C, which consists of sales and use tax information obtained by the Travis County District Attorney from the State Comptroller of Public Accounts, is made confidential by sections 111.006 and 151.027 of the Tax Code. Chapter 111 of the Tax Code pertains to the comptroller's power to collect taxes. See Tax Code § 111.001; *see also id.* § 111.0021. Section 111.004 authorizes the comptroller to examine all books, records, and papers of a corporation permitted to do business in this state. Furthermore, pursuant to section 111.0043, the comptroller may audit any taxpayer to determine that taxpayer's tax obligation. Section 111.006(a)(2) deems confidential all information the comptroller obtains "during the course of an examination of the taxpayer's books, records, papers, officers, or employees."

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<sup>3</sup>We note that the prospective juror list contains some handwritten notations regarding those individuals' criminal backgrounds. Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. 28 C.F.R. § 20.21(c)(1), (2). Section 411.089 of the Government Code also prohibits the disclosure of any CHRI obtained from the Department of Public Safety ("DPS") or any other criminal justice agency. See also Gov't Code § 411.087. Therefore, you must withhold the CHRI notations contained in Exhibit B.

Similarly, chapter 151 of the Tax Code specifically provides for the collection of sales and use taxes. *See id.* §§ 151.051, .101 (imposing sales tax and use tax). Section 151.023 authorizes the comptroller to “examine the books, records, papers, and equipment of a person who sells taxable items or of a person liable for the use tax . . . .” Section 151.027(b) makes confidential information the comptroller obtains during the course of such an examination. The information is expressly excepted from public inspection unless permitted by section 151.027(c).<sup>4</sup> *Id.* § 151.027(b). We understand that none of the exceptions listed in subsection (c) apply to the requestor.

Sections 111.006 and 151.027 clearly deem the information in Exhibit C confidential. Furthermore, we find no exception authorizing the release of the requested information in this instance. Accordingly, we conclude section 552.101 of the Government Code, incorporating sections 111.006 and 151.027 of the Tax Code, requires the county to withhold the sales and use tax information contained in Exhibit C from the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/rho

Ref.: ID# 38727

Enclosures: Marked documents

cc: Mr. Ken Driggs  
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(w/o enclosures)

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<sup>4</sup>We note that the Travis County District Attorney has a special right of access to this information pursuant to section 151.027(c)(1), which specifically authorizes the release of sales and use tax information to “another state officer or law enforcement officer.”